

OFFICE OF THE ATTORNEY GENERAL

85-00505

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SEP 6 1985

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Courts - Counties - Municipalities - Docket Fees

Under the provisions of §6-5-1, Code of Alabama 1975 and the cases decided thereunder, neither county agencies and departments nor municipalities are required to prepay docket fees when filing civil suits in district or circuit court.

Dear Mr. Tapley:

You have requested of this office an opinion respecting the following questions:

- "1. Are county agencies and departments required to prepay docket fees for civil filings in district or circuit court?
- "2. Are municipalities required to prepay the docket fee when filing a civil suit in district or circuit court?"

Under the provisions of §6-5-1, Code of Alabama 1975, and its predecessor sections, Title 7, Section 72, 1940 Code of Alabama as Recompiled 1958, and Code 1907, Section 2440, the Supreme Court of Alabama has considered questions similar to those posed by you in the following cases: McLendon v. Empire Mining Co., 74 So. 937 (1917); Cartee v. Hubbard,

155 So.2d 309 (1963) and State v. Sharp, 180 So.2d 264 (1965). In Sharp, supra, Justice Simpson held as follows:

"Section 72, Title 7, Code, as amended, exempts the state from giving of bond or security for costs in any suit brought in its own name. In Cartee v. Hubbard, 275 Ala. 356, 155 So.2d 309, we held §72, supra, applicable to the State and to a municipality as an arm of the State, in the exercise of public function."

In the earlier case, McLendon, supra, the Supreme Court held Code of 1907, Section 2440 to be applicable to county officers.

In a series of opinions beginning with an opinion addressed to the then-Commissioner of Revenue, Charles A. Boswell and dated June 28, 1977, this office has consistently held that state agencies are not required to prepay docket fees. Our reasoning in those opinions was based upon the above-cited statute and cases, as well as a consideration of the general principle that the state may not extend its credit to others by prepayment of anticipated charges (Sections 72 and 93 of the 1901 Constitution of Alabama). We have also applied this reasoning in questions involving boards of education, (opinion to the Honorable James D. Sloan, Jr., dated Feb. 9, 1981); and district attorneys (opinion to the Honorable Glen Curlee, dated May 20, 1985).

Of course, all of these opinions are directed to the question of prepayment of docket fees, as are the questions you posed. However, we note that "[i]f unsuccessful, the state is liable for costs as individual parties are." Section 6-5-1(b) (last sentence).

In view of the foregoing, it is our opinion that your questions are both to be answered in the negative. Neither county agencies and departments nor municipalities are required to prepay docket fees when filing suits in district or circuit court. Any previous opinion of this office which may appear to conflict with this holding is hereby overruled to the extent that it does so conflict.

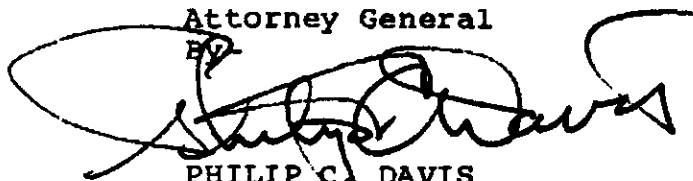
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I trust that the foregoing answers your questions. If we can be of further service to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

BY

A large, stylized handwritten signature in black ink, appearing to read "Philip C. Davis". The signature is written over the printed name and title of the Assistant Attorney General.

PHILIP C. DAVIS
Assistant Attorney General

PCD:bb